IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.307 OF 2005
IN
WRIT PETITION NO.3107 OF 2004

Hindustan Lever Ltd. ....Appellant

V/s.

TOMCO Kamgar Union ....Respondent

Mr.K.M. Naik i/b Mr.S.P. Salkar for the Appellant.

Mr.A.D. Shetty for the Respondent.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 30TH MARCH, 2005.

P.C. :

1. This is an Appeal against the order and judgment of the learned single Judge setting aside the order of the Industrial Tribunal, restoring the Complaint (ULP) No.355 of 1998 to the file of the Industrial Tribunal and directing the Industrial Tribunal to dispose of the Complaint after hearing the parties. The respective rights and contentions of the parties have been kept open.

2. The impugned order does not warrant any interference in view of the facts and circumstances of

the case as well as the nature of the impugned order. The impugned order does not prejudice the rights of any of the parties. It merely in-effect orders a reconsideration of the Complaint.

. As we are entirely in agreement with the order of the learned single Judge, it is not necessary to deal with the facts in detail.

3. The above Petition challenged an order dated 6th July, 2004 passed by the Industrial Tribunal allowing the Appellant's application to dispose of the Complaint in view of an alleged settlement dated 21st September, 2002. The Complaint was filed on 30th March, 1998 under items Nos.3, 9 and 10 of the Fourth Schedule to The Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act. The nature of the reliefs sought were not in respect of any particular employee. For instance, the reliefs sought pertained to the provisions of leave of different types, a leave book in accordance with the Factories Act, 1948 and rules framed thereunder, payment of overtime wages, appointment of a Medical Officer for the benefit of the employees and allotment of residential flats. The Respondent also sought an order restraining the Appellant from compelling any

employee to accept voluntary retirement.

4. The Appellant's case was that the alleged settlement dated 21st September, 2002 was arrived at with the Union and that the same was signed by one Raja Kamarajah, the then General Secretary and one R.Rajendran, the then President of the Union. The said Raja Kamarajah and R. Rajendran were allegedly authorised pursuant to a resolution of the General Body dated 30th March, 2002 to act, appear and settle the disputes before any authority. One of the terms of the settlement pertained to the Respondent agreeing to withdraw unconditionally various cases filed against the Appellant.

5. The Appellant's application filed before the Industrial Tribunal to dispose of the complaint filed by the Respondent was opposed by the Respondent on various grounds. It was contended that the alleged settlement dated 21st September, 2002 was fraudulent and entered into by the said erstwhile office bearers in collusion with the Appellant ; that the said office bearers were never authorised to sign the settlement and that the said office bearers were at the relevant time not members of the Union. It was also alleged that Raja Kamarajah was a chronic

alcoholic who had not attended his work regularly for the previous four years. Soon after the alleged settlement, the Respondent had in fact convened a meeting of the General Body in which the alleged settlement was rejected and both Raja Kamarajah and Rajendran had been expelled from membership.

6. The learned Judge has set out some of the clauses of the alleged settlement which indicate prima-facie that the settlement in fact benefited the said erstwhile office bearers more than the workers in general. We however do not propose to express our views on the same as it is one of the aspects which must be taken into consideration by the Industrial Tribunal at the hearing of the complaint after it is remanded.

7. In these circumstances, the learned Judge was, with respect, entirely justified in holding that the authority of the said office bearers to enter into the alleged settlement and to agree to withdraw all the cases was seriously in question and that it would be necessary for the Industrial Tribunal to determine the question after proceeding with the matter with circumspection and after affording the parties an opportunity of leading evidence in support of the

respective cases. Allegations such as these cannot be decided merely on affidavits. The effect of the alleged settlement has serious and far reaching consequence for the workmen. We are in agreement with the learned Judge that the order of the Industrial Tribunal impugned in the Writ Petition was passed without a full and proper consideration of the matter.

8. The impugned order does not prejudice the rights of the Appellant. It merely reopens the question which fell for consideration before the Industrial Tribunal to be determined in accordance with law and after affording each of the parties an opportunity of being heard and adducing necessary evidence. This aspect of the matter in fact disposes of Mr.Nayak's submission that the Industrial Tribunal does not have jurisdiction to decide the questions raised by the Respondent for impugning the alleged settlement. It is not necessary for us to decide this question at this stage. Since the matter is being remanded, this aspect of the matter can always be raised by the Appellant before the Industrial Tribunal. We therefore keep this question open.

9. In the circumstances, the Appeal is dismissed. However, there shall be no order as to

costs.